



**CITY OF SUNNYVALE
REPORT
Planning Commission**

April 11, 2005

SUBJECT: **2005-0029 – Jim Fulton** [Applicant] **Gdi Gibraltar LLC**
[Owner]: Application for a Parcel Map to allow for subdivision of the properties located at **256 and 292 Gibraltar Drive** in an MP-TOD (Moffett Park Transit Oriented Design) Zoning District. (APNs: 110-34-015 and 110-34-016).

Motion Appeal of a decision by the Administrative Hearing Officer denying a Parcel Map to merge two 1.7-acre sites (2.4-acre total) to allow the subdivision of two existing industrial buildings into eight condominium units on one common lot for industrial uses only.

REPORT IN BRIEF

Existing Site Conditions Two existing industrial buildings

Surrounding Land Uses

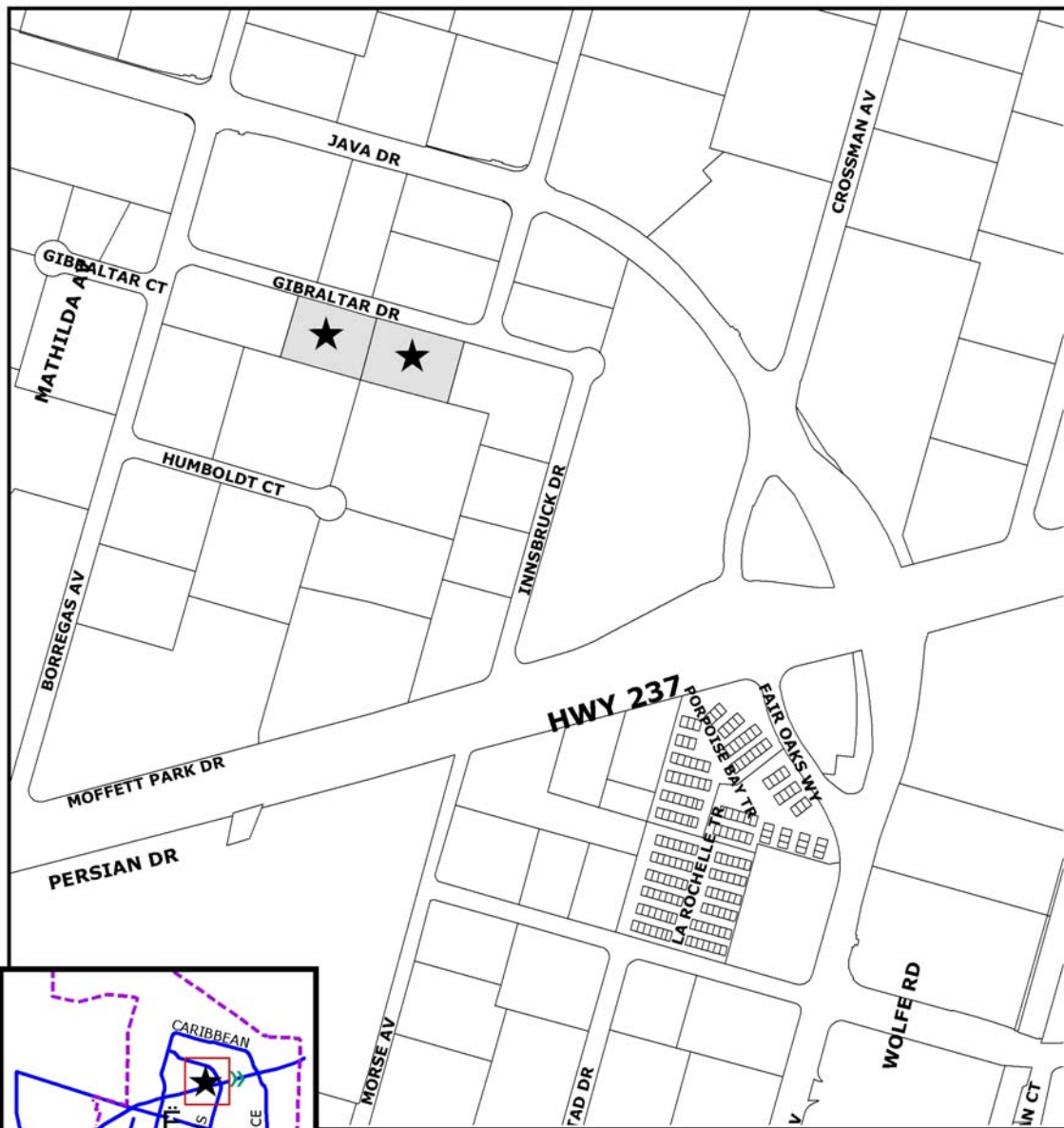
North	Across Gibraltar Drive, industrial buildings
South	Industrial buildings
East	Industrial buildings
West	Industrial buildings

Issues Compliance with the Moffett Park Specific Plan

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Administrative Hearing Action Deny

Staff Recommendation Uphold decision of Administrative Hearing Officer and deny the subdivision



**256 & 292 Gibraltar Drive
Parcel Map
Appeal**

0 300 600 1,200 Feet



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Moffett Park Specific Plan	Same	Moffett Park Specific Plan
Zoning District	MP-TOD	Same	MP-TOD
Lot Size (ac.)	1.7 + 1.7 (3.4 ac.) or 148,104 s.f.	Same	0.5 ac. min.
Gross Floor Area (s.f.)	18,500 + 18,500 (37,000 s.f.)	Same	51,836 max.
Lot Coverage (%)	24.9%	Same	45% max.
Floor Area Ratio (FAR)	24.9%	Same	50% max.
No. of Buildings On-Site	1 + 1 (2)	Same	---
Building Height (ft.)	18 ft.	Same	75 ft. max.
No. of Stories	1	Same	8 max.
Landscaping			
• Total Landscaping (sq. ft.)	17,500 + 17,500 (35,000 s.f.)	Same	29,621 min.
• Frontage (ft.)	22 ft.	Same	15 ft.
• % Based on Parking Lot	46%	Same	20%
★ • Parking Lot Area Shading (%)	Approx. 25%	Same	50% min. in 15 years
Parking			
• Total Spaces	84 + 85 (169)	Same	123 min.
• Standard Spaces	46 + 47 (93)	Same	71 min.
• Compact Spaces/ % of Total			
• Accessible Spaces	4 + 4 (8)	Same	3 min.
★ • Aisle Width (ft.)	20 ft.	Same	26 ft. min.
• Bicycle Parking	0	Same	2 Class I + 2 Class II min.
Stormwater			
• Impervious Surface Area (s.f.)	56,552 + 56,552 (113,104 s.f.)	Same	118,482 s.f. max.

★ Starred items indicate deviations from Sunnyvale Municipal Code.

ANALYSIS

Description of Proposed Project

The subject site consists of two adjacent parcels with a one-story building on each parcel which is surrounded by parking and landscaping. The applicant proposes subdividing the existing two buildings into 4 units in each building, for a total of 8 industrial condominium units on one common lot. The uses on the site would continue to be industrial office space as well as research and development. Other proposed improvements include installation of a sidewalk along Gibraltar Drive and upgrading of the landscaping.

The project site is located in a MP-TOD high intensity area of the Moffett Park Specific Plan (see Attachment K). The project proposes subdivision of an existing low density structure in a unique park of the City that has been designated as a target for high density (max. 70% FAR) structures.

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
2005-0029	Parcel Map to allow for subdivision of building on two properties	Administrative Hearing / Denied	2/16/05
1968-0960	Parcel Map for Industrial Lot Subdivision	City Council / Approved	2/26/68

The buildings at 256 and 292 Gibraltar Drive have been vacant and on the market for lease and sale for over two years. According to the applicant, General Development Inc. (GDI) purchased the buildings of 256 and 292 Gibraltar Drive in October 2004. The development strategy was to divide the existing buildings into eight condominium lots allowing for the sale of the individual units. The strategy was based on driving economic market conditions and the need for private ownership of small office spaces in Moffett Park and the greater area. Prior to purchasing the property General Development Inc. had a predevelopment meeting with the City of Sunnyvale to discuss the proposed concept of incubator spaces for private ownership.

General Development Inc. has proposed private office space in 3,000 to 4,000 square feet units, in a campus-like environment. The applicant has received offers from three companies and has five other companies that have expressed

interest. GDI has suggested that the new concept is needed as it considers current market conditions.

Administrative Hearing: The project was reviewed at the Feb. 16, 2005 Administrative Hearing.

Staff stated that while the City is generally very supportive of commercial development, this project was denied because of its location in the Transit Oriented Development section of Moffett Park. This unique area of the City has been targeted for high-density development to promote use of the existing Light Rail and bus lines. Sub-dividing the property and selling to multiple owners would decrease the opportunity for the site to be redeveloped into a high density, which is a long-term goal for the site, as specified in the 2004 Moffett Park Specific Plan (MPSP).

The applicant stated that the site has been vacant for two years and stressed that current market conditions call for the proposed use of the site. The applicant also claimed that the proposed project will result in the creation of 136 new jobs. The applicant's team stated that the proposed project allows for incubator office space and that the City's preferred campus use proposed by staff would involve the assemblage of land. The primary issue raised by the applicant was that the existing building provides for a type of office space (Class C) that is always in demand, and the existing building is currently in good shape with a long anticipated life span remaining. The written comments provided by the applicant are in Attachment I.

The Administrative Hearing Officer concurred with the staff recommendation to adhere to the goals of the MPSP and denied the application. The Hearing Officer explored options such as the creation of fewer units on the lot; however, the proposed alternatives were not satisfactory to the applicant.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemption includes no change to the existing building and no proposed change to the use.

Parcel Map

Description of Parcel Map: The Parcel Map would subdivide the two existing buildings into a total of eight separate ownership units located on one common lot.

Site Layout: The two parcels have street frontage along Gibraltar Drive. There is currently no public sidewalk. Each site is similarly developed with a one-story building located in the center of the site and surrounded by parking. Both sites have landscaping around the perimeter with significant trees and large berms along Gibraltar Drive. There is currently no proposed change to the structure other than minor upgrades to bring it into compliance with current Building Code.

Uses: The site is currently vacant. The proposed subdivision would allow for individual ownership of up to 8 different tenants. The mix of use will range from research and development offices, professional and medical offices and a small amount of retail or restaurant.

Two considerations went into analyzing the proposed mix of uses: appropriate location for the use and adequate parking. The building was originally designed for professional office, or for research and development. Given the reduced visibility from major streets, the site is not well suited for commercial retail, although it may provide for some ancillary or support retail for neighboring businesses. The site is located in the Moffett Park – Transit Oriented Development (MP-TOD) zoning district which envisions higher intensity uses in proximity to the Light Rail and bus lines which run along Java Drive.

The existing parking limits the potential uses on the site. There are currently 169 spaces on the site, which is one parking space for every 219 square feet of building space. This amount of parking exceeds the requirements for research and development and for general office use. While other permitted uses may be considered, sufficient parking should be verified prior to approval. All uses permitted by right in the MP-TOD area are potentially allowable, and any other proposed uses on the site should only be permitted through a Use Permit.

Landscaping: The two parcels have a very similar layout with trees along the perimeter of the combined site. The site currently has 34 protected heritage trees and 74 smaller trees. Protected trees are those that measure 38 inches or greater in circumference when measured at four feet from the ground. The plans for this project include preserving all 34, in addition to the smaller trees that will mature into protected trees. Routine maintenance pruning is recommended for south property line Eucalyptus, pruning and or replacement of Elms on the west side, and crown reduction pruning of Canary Island Pines on the north side of building parking lot. Information on existing landscaping and protection measures is provided in Attachment G.

The Sunnyvale Municipal Code requires 50% shading (at 15 years of growth) for parking lots. The site currently provides approximately 25% parking lot shading. The project should meet compliance with current Code requirements

on the installation and maintenance of additional trees to provide the required shading to the extent possible. This includes planting additional trees along the northern perimeter of the property and may include planting trees in the landscaped areas just north and just south of the building (See Attachment B, Condition of Approval 5.c). Some reduction in parking could accommodate for additional landscaping.

Site Improvements: The street frontage along Gibraltar Drive currently has no sidewalk. This project includes the installation of a standard public access sidewalk along the full length of Gibraltar Drive. The sidewalk shall be installed in such a manner as not to cause detrimental impact to the roots of the existing trees.

Owners' Association: As a condominium project, the project is required to have an association to manage the building, landscaping, parking and other common area amenities and utilities. The minimum requirements for this association are described in Attachment B, Condition of Approval 2.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected. Certain Public Works development fees may be required, such as sanitary sewer connection fees.

Public Contact

No public input was received on this application.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 17 notices mailed to adjacent property owners and business listed for the project site; 2 were returned as having no forwarding address.	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website• Recorded for SunDial

Conclusion

Discussion: The Moffett Park Specific Plan (MPSP) was approved by the City Council in 2004 and provided direction on the intended uses for the northern portion of the City. It is the goal of the City of Sunnyvale to maximize Moffett Park development with high density corporate headquarters, office, and

research/development facilities of high technology companies which will represent the next wave of economic growth in Silicon Valley.

While the MPSP allows for some ancillary uses, the primary intent is to provide for Class A office space, particularly in the Moffett Park – Transit Oriented Development (MP-TOD) Zone. According to the 2003 Community Development Strategy, “Sunnyvale should support the private redevelopment of Class C buildings to Class A buildings, while encouraging reinvestment in Class B and Class C space to provide affordable office/industrial space for start-up companies and for support services.” The Strategy goes on to set a goal of 35% Class A buildings; as of 2001, Class A buildings were only 3% of the City’s inventory. The project site has been identified as prime location for redevelopment to a Class A office space.

The City is very supportive of commercial development. However, this project is proposed for a unique part of the City that the City Council targeted for Transit Oriented Development; that is, to provide for high-density development to promote use of the existing Light Rail and bus lines located along Java Drive. Sub-dividing the property would promote multiple ownership on the subject site. This would decrease the opportunity for the site to be redeveloped into a high density property, which is a long-term goal for the site as stated in the MPSP.

The applicant has raised several key arguments in support of the project. The key issues and staff response are listed in the table below. A more detailed list of issues and staff response is presented in Attachment F.

Key Issue Raised by Applicant	Staff Response
<i>MPSP should be a flexible document for at least a 20-year period.</i>	The current document does allow for flexibility, supporting different uses as they support the primary intent of providing space for corporate offices.
<i>Market conditions don’t support development of Class A office space.</i>	The MPSP provides long term vision for the northern portion of the city. The City currently has a surplus of Class B and Class C office space and needs to encourage the potential for Class A space for future needs.
<i>Availability of development reserve and Transfer of Development Rights (TDR) program to take advantage of excess Floor Area Ratio (FAR).</i>	While the project proposes offering excess FAR for use by neighboring sites, there is currently a sizable surplus of FAR available in the Development Reserve.

Key Issue Raised by Applicant	Staff Response
<i>MPSP does not take current market conditions into account.</i>	The MPSP was approved 10 months ago (April 2004) and factored in both current and projected market forces.
<i>Ancillary uses intended for the Moffett Park employees, professional services, and similar compatible uses are allowed and encouraged.</i>	Ancillary uses are encouraged as they support adequate Class A office space. A sufficient amount of Class A office space has not yet been achieved.
<i>Support small business.</i>	The City strongly values opportunity for ownership units and has encouraged this type of development elsewhere in the City. However, the MPSP established the northern portion of the City for a targeted use, which is for larger corporate offices. The current layout allows for use by small businesses but not ownership units.
<i>Size of property too small for high FAR.</i>	Staff contends that there are design options available that would allow for a higher FAR for the subject site.

The applicant purchased the property on November 3, 2004 (per RealQuest.com) and applied for a Preliminary Review of the proposed subdivision on November 22, 2004. Staff comments from the Preliminary Review included: "Staff has concerns with the use as proposed. The MP-TOD Zoning District is meant for higher FAR uses of Class A office, R&D, and Corporate Headquarters... The current building does not meet these standards, and staff is concerned that the establishment of a condominium ownership will prolong the life of this building beyond its standard lifetime. It will take much longer and be much more difficult to redevelop the site into a use that conforms to the new zoning district with multiple property owners. Staff has not yet determined whether they will be recommending denial, but the application is a concern."

Findings and General Plan Goals: Staff is recommending that the Planning Commission uphold the decision of the Administrative Hearing Officer for denial for this project because the Findings (Attachment A) were not made. However, if the Planning Commission is able to make the required findings, staff is recommending the Conditions of Approval (Attachment B). The applicant proposed several findings in supporting documentation for their

application. Staff addressed each finding in the supporting documentation, as presented in Attachment F.

Alternatives

1. Do not Approve the Parcel Map.
2. Approve the Parcel Map with attached conditions.
3. Approve the Parcel Map with modified conditions.

Recommendation

Alternative 1.

Prepared by:

Jamie McLeod,
Project Planner

Reviewed by:

Gerri Caruso
Principal Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Letter from the Applicant
- E. Supporting Documentation from the Applicant
- F. Staff Response to Supporting Documentation from Applicant
- G. Tree Inventory and Construction Impacts on Canary Island Pines
- H. Minutes from the Administrative Hearing Dated Feb. 16, 2005
- I. Written comments provide by the applicant at the Administrative Hearing
- J. Appeal Letter
- K. Map of Moffett Park Specific Plan

Recommended Findings - Parcel Map

Approval of a Parcel Map requires a finding to be made and any of eight other findings not to be made.

A. If the following finding can be made, the Administrative Hearing Officer should recommend approval of the Parcel Map.

1. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan and any applicable specific plan.

B. However, if any of the following findings can be made, the Administrative Hearing Officer should recommend denial of the Parcel Map.

1. That the subdivision is not consistent with the General Plan.
2. That the design or improvement of the proposed subdivision is not consistent with the General Plan.
3. That the site is not physically suitable for the proposed type of development.
4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.
8. That the map fails to meet or perform one or more requirements or conditions imposed by the "Subdivision Map Act" or by the Municipal Code

Staff was not able to make the first finding (A.1) and was able to make one of the second set of findings (B.1), and recommends denial of the Parcel Map.

The City places a strong value on the opportunity for ownership units and the Community Development strategy has encouraged this type of development. This type of subdivision has been supported elsewhere in the City. However, the Moffett Park Specific Plan – Transit Oriented Development (MP-TOD) was established to promote high density Class A office space in the area along the

light rail system. The proposed subdivision of the existing building runs counter to the Specific Plan goals as it reduces the likelihood that this building will be redeveloped in the near future to meet the density goals for this area. The proposed subdivision does not meet the goals for the Moffett Park Specific Plan area.

Recommended Conditions of Approval – Parcel Map

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development, major changes may be approved at a public hearing.
- B. The Parcel Map shall expire twenty-four months from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
- C. Obtain Building and Fire permits for requested modifications, including:
 - 1. Requirement for on-site hydrant (903.2 UFC).
 - 2. As applicable, comply with the requirements contained in Sunnyvale Municipal Code Chapter 16.52, 16.53 and 16.54; California Fire Code, Title 19, California Code of Regulations.
 - 3. The water supply for fire protection and fire fighting shall be approved by the Department of Public Safety.
 - 4. Install approved smoke detectors in accordance with the Sunnyvale Municipal Code 16.52.280.
 - 5. Fire access lanes are required and shall be marked in accordance with SMC 16.52.160, UFC 901.
 - 6. Provide approved fire extinguishers (minimum size 2A10BC).
 - 7. Provide illuminated exit signs (CFC 1212.4)
 - 8. Provide emergency egress lighting (CFC 1212.1).
 - 9. Install panic hardware on exit doors (CFC 1207.4).
 - 10. This project triggers the need for sidewalk installation along Gibraltar; based on the report provided, some modifications to

the sidewalk may be needed to mitigate the impact to individual trees.

11. Landscape irrigation shall be connected to existing reclaimed water system. Abandon existing irrigation connection to water line.
12. This project requires recordation of parcel map.
13. Existing deficient public improvements shall be upgraded to current City standards, including but not be limited to upgrading existing water meter to radio-read water meter and driveway approaches.
14. Upgrade existing fire hydrant to Clow-Rich 75; existing hydrant shall be salvaged and returned to Public Works Department.
15. Install minimum 5ft wide sidewalk along entire frontage of project.
16. Obtain an encroachment permit from the Public Works Department/Engineering for all improvement in the public right-of-way.
17. The developer shall execute a Development Agreement and post surety bond(s) and/or cash deposit(s) for all proposed public and/or private improvements prior to any permit issuance.
18. All existing utility lines and/or their appurtenances not serving the project and/or have conflicts with the project, shall be capped, abandoned, removed, relocated and/or disposed to the satisfaction of the City.
19. Each unit should function independently in terms of utility service lines, unless otherwise provided in the CC&R for shared usage and maintenance responsibilities.
20. This project shall comply with all standard PW/Engineering conditions of approval (available upon request).
21. The developer is required to pay for all changes or modifications to existing city utilities, streets and other public utilities within or adjacent to the project site, including but not limited to utility facilities/conduits/vaults relocation due to grade change in the park strip area, caused by the development.

2. CC&R's (CONDITIONS, COVENANTS AND RESTRICTIONS)

- A. Any proposed deeds, covenants, restrictions and by-laws relating to the subdivision are subject to review and approval by the Director of Community Development and the City Attorney.

- B. The developer/Owner shall create an Owner's Association that comports with the state law requirements for Common Interest Developments. Covenants, conditions and restrictions (CC&Rs) relating to the development are subject to approval by the City Attorney and Director of Community Development prior to approval of the Final Map. In addition to requirements as may be specified elsewhere, the CC&R's shall include the following provisions:
- C. Membership in and support of an association controlling and maintaining all common facilities shall be mandatory for all property owners within the development.
- D. The homeowners association shall obtain approval from the Director of Community Development prior to any modification of the CC&R's pertaining to or specifying the City.
- E. The developer shall maintain all utilities and landscaping for a period of three years following installation of such improvements or until the improvements are transferred to an owners association, following sale of at least 75% of the units, whichever comes first.
- F. The CC&Rs shall contain the following language:
 - 1. "Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.
 - 2. It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.

3. It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.
4. It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Sunnyvale Municipal Code or any other applicable law.
5. No Waiver. No failure of the City of Sunnyvale to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.
6. Third-Party Beneficiary. The rights of the City of Sunnyvale pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of Sunnyvale.
7. Hold Harmless. Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save, defend and hold the City of Sunnyvale harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property."

3. EXTERIOR EQUIPMENT

- A. Any modification or expansion of unenclosed uses shall require approval from the Director of Community Development.

4. FENCES

- A. Only fences, hedges and shrubs or other natural objects 3 feet or less in height may be located within a "vision triangle" (For definition, refer to Vision Triangle brochure or SMC 19.12.040(16), SMC 19.12.050 (12))

5. LANDSCAPING

- A. All landscaping shall be installed in accordance with the approved landscape plan and shall thereafter be maintained in a neat, clean, and healthful condition.
- B. Provide and maintain trees at minimum 30 feet intervals along side and rear property lines, except where mature trees are located immediately adjoining on neighboring property.
- C. Provide and maintain trees throughout the lot to target achieving the goal of at least fifty percent of the parking area to be shaded within fifteen years after the planting of the trees (SMC 19.38.070(d)(2))
- D. Provide protection measures for all existing trees and tree roots during any construction or renovation, including the installation of the sidewalk along Gibraltar Drive.

6. BICYCLE PARKING

- A. Provide 2 Class I and 2 Class II bicycle parking spaces per VTA Bicycle Technical Guidelines as approved by the Director of Community Development.

7. ROOF/ROOF SCREENS

- A. Roof vents, pipes and flues shall be combined and/or collected together on slopes of roof or behind parapets out of public view to meet code requirements as noted in Sunnyvale Municipal Code Section 19.38.020.

8. PARCEL MAP CONDITIONS

- A. Comply with all applicable code requirements as noted in the Standard Development Requirements.

9. SUBDIVISIONS

- A. Individual buildings shall not be sold separately, or if the sale of any building shall be anticipated, all requirements of the Subdivision Ordinance in effect at the time of the sale shall be complied with in full prior to such sale (State Subdivision Map Act).
- B. Remove all debris, structures, area light poles, and paving from the site prior to recordation of a final map.